

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On its own motion)	
)	Docket No. 00-0586
Adoption of 83 Ill. Adm. Code 550)	
“Non-Discrimination in Affiliate)	
Transaction for Gas Utilities”)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, May 18, 2001, we have filed with the Chief Clerk of Illinois Commerce Commission the enclosed People of the State of Illinois’ Reply Brief on Exceptions to the Hearing Examiner’s Proposed Order via e-docket to the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois 62794-9280.

Erika D. Edwards
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Erika D. Edwards, Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on May 18, 2001, and by electronic mail to all active parties.

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ILLINOIS COMMERCE COMMISSION)	
On its own motion)	
)	Docket No. 00-0586
Adoption of 83 Ill. Adm. Code 550 “Non-)	
Discrimination in Affiliate Transaction for Gas)	
Utilities)	

**PEOPLE OF THE STATE OF ILLINOIS’
REPLY BRIEF ON EXCEPTIONS
TO THE HEARING EXAMINER’S PROPOSED ORDER**

The People of the State of Illinois (hereafter “People” or “AG ”) submit the following as their Reply to the Briefs on Exceptions to the Hearing Examiners’ Proposed Order (hereafter “HEPO”). The People’s silence on any issue should not be construed as either supporting or opposing any particular position on that issue.

Joint Marketing

The People of the State of Illinois reiterate the arguments set out in the Comments of the People of the State of Illinois and Brief on Exceptions of the People of the State of Illinois that gas utilities and their affiliates should not be allowed to jointly market their services. Further, the Citizens Utility Board, Cook County States Attorney’s Office (“CUB/CCSAO”), ICC Staff and NIACCA make similar arguments in their exceptions to the HEPO.(CUB/CCSAO Brief on Exc. at 6-7, Staff Brf. on Exc. at 7-13, NIACCA Brf. on Exc. at 4-8) As Staff pointed out, “The Commission presently has no greater authority over ARGs than it has over Heating Ventilation and Air Conditioning (“HVAC”) contractors or any other entities that compete with affiliates.

This should not discourage the Commission from adopting rules that prevent gas utilities from leveraging their position as [a] monopoly service provider in adjacent competitive markets.” (Staff Brf. on Exc. at 8) The Commission should not allow a gas utility with monopoly status to use this status to provide unfair advantages to its affiliates. This fundamental difference in the structure of the gas market as compared to the electric market makes the prohibition against joint marketing contained in this draft rule necessary.

Reply to Nicor Gas

Nicor Gas’ Brief on Exceptions proposes modifying the HEPO to include language that specifically denies the AG’s request to make the log required in Section 550.140 available to the public. The People oppose this modification. As stated in our Initial Comments, and Initial Brief on Exceptions, the log created pursuant to Section 550.140 should be made available to parties other than the Commission and certainly to the AG, as the state’s chief law enforcement agency. The log proposed by this draft rule is a record of when the utility company exercises its discretion in the application of tariff provisions, services not governed by tariffs, rebates, fee waivers, etc. This log will form the basis to determine if a utility is using its discretionary authority in a discriminatory manner.

This information is critical to the AG in monitoring the development of competition. The AG needs access to this information to properly protect consumers and the development of the market. The AG should be allowed to review this log without the filing of a complaint. Any proprietary or confidentiality issues can be handled easily by the execution of a proprietary agreement as is common practice. The existence of confidential information in these logs is a problem that can be easily remedied by either the use of proprietary agreements or redaction. The

release of confidential customer information is not a problem that should prevent the AG from viewing this log. For these reasons the proposed language of Nicor Gas should be rejected.

Reply to Peoples Gas

Peoples Gas also proposes that the HEPO be modified to include language that specifically rejects the AG's proposal to make the log required in Section 550.140 available to the public. For the reasons stated above this proposal should be rejected.

Peoples Gas also suggests that the requirements for the log in Section 550.20(e) be more narrowly tailored. The People oppose this modification. Section 550.20(e) as proposed in the HEPO states:

- e) If discretion is permitted in application of a tariff provision, gas utilities shall maintain a log detailing each instance in which it exercised discretion, as required in Section 550.140(c).

Peoples Gas suggests that the requirements laid out in this section are beyond the scope of this docket because 1) the purpose of this rule-making is to address nondiscrimination in the context of affiliate transactions, and 2) the Commission Order initiating the rule-making was focused on transportation problems. This, however, is an incorrect argument. The HEPO correctly agrees with Staff's argument that: "...only through such a logging requirement will it be possible to make a reasoned determination of whether utilities are discriminating against non-affiliate entities or providing preferential treatment to affiliated entities." (HEPO at 10) The abuse of discretion in applying tariff provisions can eventually become discrimination. The requirements for this log are the only reasonable means to determine if discrimination has actually occurred.

Preventing discrimination in the gas industry is precisely why this docket was created and is crucial to the development of a healthy competitive market. The requirements of the log

referred to in Section 550.20(e) are essential to achieving this goal and well within the scope of this docket. The language proposed by Peoples Gas should be rejected.

Conclusion

WHEREFORE, for the reasons set forth above, the People respectfully request that the Commission modify the Hearing Examiner's Proposed Order in accordance with the arguments made above and in their Brief on Exceptions.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS
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Dated: May 18, 2001

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